

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Yoshitaka Mizutani et al.

Application No.: 10/577,224

Confirmation No.: 3417

Filed: April 26, 2006

Art Unit: 1753

For: ELECTROCHEMICAL GAS SENSOR

Examiner: K. K. Olsen

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Madam:

In response to the Requirement for Restriction set forth in the Office Action mailed May 14, 2009 (Paper No. 3417), applicants hereby elect Group I, claims 1-5, for continued examination, with traverse.

The Examiner has required restriction between:

- | | |
|----------|--|
| Group I | Claims 1-5, drawn to an electrochemical sensor having a carbon black/fluorine resin membrane; and |
| Group II | Claims 6-8, drawn to an electrochemical sensor having a lead portion pressed against the membrane. |

The Requirement for Restriction is improper because all claims share the same special technical feature of an electrochemical gas sensor comprising permeable membrane through which a gas travels to be measured. It is important to note that unity of invention (not restriction practice pursuant to 37 C.F.R. § 1.141-1.146) is applicable in national stage applications submitted under 35 U.S.C. § 371. The MPEP explains, “[a] group of inventions is considered

linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature.” MPEP § 1893.03(d). All claims are directed to an electrochemical gas sensor comprising a permeable membrane. The “technical features” identified in the Requirement for Restriction (*i.e.*, the carbon black/fluorine resin and the location of the leads) are merely different recitations characterizing the claimed electrochemical gas sensor. According to the Requirement for Restriction, the claims of Group I are directed to an electrochemical gas sensor having a carbon black/fluorine resin on the gas permeable membrane. However, Claim 7, which is included with Group II, also includes a carbon black/fluorine resin on the gas permeable membrane. Therefore, according to the reasoning set forth in the Requirement for Restriction, claim 7 should be included with the claims of Group I (instead of Group II). Likewise, the claims of Group I do not exclude situations where the lead portion of the electrochemical gas sensor is pressed against the gas permeable membrane. In sum, because all the claims share the same technical feature (an electrochemical gas sensor comprising a gas permeable membrane) and because the “technical features” identified in the Requirement for Restriction are not mutually exclusive, restriction is improper and the claims should be examined together.

Furthermore, applicants note that if the examiner (1) determines that the claims lack unity of invention and (2) requires election of a single invention, when all of the claims drawn to the elected invention are allowable, the nonelected invention should be considered for rejoinder. *See* MPEP § 1893.03(d). Any nonelected product claim that requires all the limitations of an allowable product claim, and any non-elected process claim that requires all the limitations of an allowable process claim, should be rejoined. *See id.*

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 21398-00037-US1 from which the undersigned is authorized to draw.

Dated: June 11, 2009

Respectfully submitted,

Electronic signature: /R. James Balls/

Burton A. Amernick

Registration No.: 24,852

R. James Balls

Registration No.: 57,703

CONNOLLY BOVE LODGE & HUTZ LLP

1875 Eye Street, NW, Suite 1100

Washington, DC 20006

(202) 331-7111

(202) 293-6229 (Fax)

Attorneys for Applicant